

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>NORTH DAKOTA, WESTERN DIST.</u>	
Name (under which you were convicted): CLIFFORD SEE WALKER		Docket or Case No.: 1:17-CR-111	
Place of Confinement: U.S. Penitentiary-Tucson		Prisoner No.: 09857-059	
UNITED STATES OF AMERICA		Movant (include name under which convicted) CLIFFORD SEE WALKER	
V.			

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
Western District of North Dakota, Federal Bldg and United States Courthouse, 220 East Rosser Ave, Bismark, ND 58501

(b) Criminal docket or case number (if you know): 1:17-CR-111

2. (a) Date of the judgment of conviction (if you know): February 16, 2018

(b) Date of sentencing: June 11, 2018

3. Length of sentence: 235 Months

4. Nature of crime (all counts):

One Count, 18 USC 2241 Aggravated Sexual Abuse By Force

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) N/A Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: _____ N/A
- (b) Docket or case number (if you know): _____ N/A
- (c) Result: _____ N/A
- (d) Date of result (if you know): _____ N/A
- (e) Citation to the case (if you know): _____ N/A
- (f) Grounds raised: _____ N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____ N/A
- (2) Result: _____ N/A
- (3) Date of result (if you know): _____ N/A
- (4) Citation to the case (if you know): _____ N/A
- (5) Grounds raised: _____ N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____ N/A
- (2) Docket or case number (if you know): _____ N/A
- (3) Date of filing (if you know): _____ N/A
- (4) Nature of the proceeding: _____ N/A
- (5) Grounds raised: _____ N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Petitioner plead guilty in accordance with a "plea agreement" which included an "appeal waiver" and was informed by counsel that the issues included herein were not appealable when Petitioner requested that counsel file an appeal on these issues.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel completely misguided Petitioner, causing Petitioner to enter into a plea agreement based on erroneous and deliberately misleading facts and guidance. Petitioner was wholly dependent upon counsel's advice and upon that advice, plead guilty to charges that were not true.

But for the erroneous advice from counsel, Petitioner would have gone forth with a trial by jury and the outcome of the proceedings would have been different.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Counsel convinced Petitioner that the issue of ineffective assistance was not appealable on Direct Appeal. Counsel refused to file.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2). If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Ineffective Assistance of Trial Counsel who convinced this Petitioner that Petitioner could not appeal due to an appeal waiver.

GROUND TWO: ACTUAL INNOCENCE / INEFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner informed counsel on multiple occasions that the contact between Petitioner was consensual and that there was no force upon either party and that Petitioner wished to go to trial. Counsel erroneously advised that if Petitioner proceeded to trial the Petitioner would be subject to a much greater penalty. Being wholly dependent upon counsel, Petitioner agreed to say what counsel told Petitioner to say even though Petitioner disagreed with counsel.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

N/A

(2) If you did not raise this issue in your direct appeal, explain why:
Same as GROUND ONE

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND THREE: COERCION BY COUNSEL / INEFFECTIVE ASSISTANCE / PLEA WAS NOT KNOWING AND INTELLIGENTLY MADE.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner's counsel coerced Petitioner into taking the plea by inordinate pressure and erroneous information. Petitioner said what his counsel told him to say at the plea colloquy out of fear of getting a much greater penalty. While Petitioner did not agree with what the counsel said, Petitioner was fearful of not following counsel's instructions.

Counsel was completely derelict in his duties to safeguard the Petitioner's rights under the law.

(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

N/A

- (2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

N/A

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____

N/A

Date of the court's decision: _____

N/A

Result (attach a copy of the court's opinion or order, if available): _____

N/A

-
- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

N/A

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

N/A

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

N/A

Docket or case number (if you know): _____

N/A

Date of the court's decision: _____

N/A

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: SAME AS ISSUES ONE AND TWO

GROUND FOUR: PROSECUTORIAL MISCONDUCT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The evidence to be submitted to the court in the event of a trial was forcefully removed from the Petitioner in violation of his Fourth and Fourteenth Amendment Rights when the holding facility officers threw the Petitioner to the floor and literally "stripped the clothing from his body" and then turned that questionable evidence over to the U.S. Attorney prosecuting the case who, reasonably, should have known how he came into possession of the Petitioner's clothing in the absence of a warrant for that evidence.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

N/A

(2) If you did not raise this issue in your direct appeal, explain why:

SAME AS ISSUES ONE, TWO, AND THREE.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

GROUND ONE: ^{FIVE}

INEFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 Counsel not only failed to investigate this case but simply refused to prepare for trial at any point during the procedure, instead relying on whatever information was provided by the U.S. Attorney. Counsel was wholly unprepared to negotiate a plea agreement as well as wholly unprepared to proceed to trial as the the Petitioner had, on numerous occasions, had spoken his desire to do so until convinced by counsel to plead counsel to crimes Retitioner had not committed.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

- (2) If you did not raise this issue in your direct appeal, explain why:

Same as previous issues

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):
N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐ N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

The entirety of the grounds herein were not brought on direct appeal due to ineffective assistance of counsel where counsel, having been instructed to file a Notice of Appeal, convinced Petitioner that Petitioner had waived his right to Appeal on any grounds.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

Unknown at this time

(b) At the arraignment and plea:

Same

(c) At the trial:

Same

(d) At sentencing:

Same

(e) On appeal:

Same

(f) In any post-conviction proceeding:

NONE

(g) On appeal from any ruling against you in a post-conviction proceeding:

NONE

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐ N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This Petition is timely filed on, or before, August 11, 2019
in accordance with the AEDPact and PLRact.


Therefore, movant asks that the Court grant the following relief:

Petitioner seeks an evidentiary hearing and to withdraw his plea for
or any other relief to which movant may be entitled.
showing of good cause.

NO ATTORNEY*****NO ATTORNEY*****NO ATTORNEY*****NO ATTORNEY
Signature of Attorney (if any)

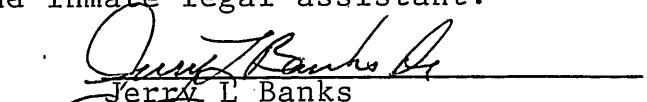
I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion
under 28 U.S.C. § 2255 was placed in the prison mailing system on June 6, 2019
(month, date, year)

Executed (signed) on June 6, 2019 (date)


Signature of Movant

~~If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.~~

This document has been completed for submission with the assistance of
inmate Jerry L Banks BOP#99023-198, and inmate legal assistant.


Jerry L Banks